

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

BENJAMIN BEAN,)	
)	
Plaintiff,)	
)	
v.)	
)	
PATRICIA BARNHART, in her)	
individual capacity as former Warden)	
for the Maine Department)	
of Corrections)	Civil No. 1:13-cv-00196-NT
)	
and)	
)	
JOSEPH PONTE, in his individual)	
capacity as Commissioner for the)	
Maine Department of Corrections,)	
)	
)	
Defendant.)	

**ORDER AFFIRMING THE RECOMMENDED DECISION OF THE
MAGISTRATE JUDGE ON THE DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

The Plaintiff, Benjamin Bean, filed suit against the Defendants, former Maine Department Corrections Warden Patricia Barnhart and Maine Department of Corrections Commissioner Joseph Ponte, on May 30, 2013. The Plaintiff's complaint (ECF No. 1) asserts that the Defendants violated the Eighth Amendment by failing to protect him from an attack by another prisoner. The Defendants moved for summary judgment (ECF No. 18) on November 7, 2013 based on their affirmative defense that Bean failed to exhaust available administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e.

The United States Magistrate Judge filed a Recommended Decision (ECF No. 33) with the Court on March 12, 2014, denying the motion. The Defendants filed an objection March 25, 2014 (ECF No. 34) and the Plaintiff filed a response on April 5, 2014 (ECF No. 35).

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record, and made a de novo determination of all matters adjudicated by it. I concur with the recommendations of the United States Magistrate Judge.

As Footnote 6 of the Recommended Decision envisions, a pretrial conference is warranted to discuss and schedule further proceedings regarding the Defendants' affirmative defense that the Plaintiff failed to exhaust available administrative remedies. Several issues related to this defense remain unresolved, such as precisely what legal inquiry applies where a plaintiff argues that a failure to follow prison procedures should be excused, who bears the burden on any part of that inquiry, whether the Court may resolve the issue of exhaustion before trial, and what sort of proceedings would allow the Court to do so fairly and expeditiously.

The Court therefore **AFFIRMS** the Magistrate Judge's Recommended Decision and directs the Clerk of Court to contact the parties and schedule a pretrial conference regarding the issues discussed above.

SO ORDERED.

/s/ Nancy Torresen
United States District Judge

Dated this 13th day of May, 2014